



1 position of Fire Inspector with the TFD. Her proposed amended complaint alleges new  
2 claims of retaliation under the Arizona Civil Rights Act, Ariz. Rev. Stat. § 41-14649A,  
3 beginning in July 2014 after Plaintiff was promoted. Plaintiff also requests, for the first  
4 time, a jury trial.

5 Defendant opposes the Motion to Amend on the ground that there is no relation  
6 between the new allegations and those in the proposed amended complaint. Defendant  
7 further argues that although Plaintiff also seeks a jury trial in the proposed amended  
8 complaint, she waived her right to a jury trial for those factual allegations in the original  
9 complaint. Defendant concludes that a jury would only hear the new factual allegations  
10 in the amended complaint, which would result in conducting two separate trials within  
11 one case if leave is granted.

## 12 **II. Legal Standard**

13 Rule 15 of the Federal Rules of Civil Procedure addresses amended and  
14 supplemental pleadings as follows:

### 15 (a) Amendments Before Trial.

16 (1) Amending as a Matter of Course. A party may amend its  
17 pleading once as a matter of course within:

18 (A) 21 days after serving it, or

19 (B) if the pleading is one to which a responsive pleading  
is required, 21 days after service of a responsive pleading or 21 days  
after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

20 (2) Other Amendments. In all other cases, a party may amend  
21 its pleading only with the opposing party's written consent or the court's  
leave. The court should freely give leave when justice so requires.

22 . . .

23 (d) Supplemental Pleadings. On motion and reasonable notice, the  
24 court may, on just terms, permit a party to serve a supplemental pleading  
25 setting out any transaction, occurrence, or event that happened after the date  
of the pleading to be supplemented. The court may permit supplementation  
26 even though the original pleading is defective in stating a claim or defense.  
The court may order that the opposing party plead to the supplemental  
27 pleading within a specified time.

28

1 The Rule allows an amended pleading to allege relevant facts occurring after the filing of  
2 the original pleading. Fed.R.Civ.P. 15(d); *Keith v. Volpe*, 858 F.2d 467, 468 (9th  
3 Cir.1988).

4 A supplemental pleading is for the purpose of “judicial economy and  
5 convenience,” and such supplemental pleadings are favored. *Keith*, 858 F.2d at 473.  
6 “[T]he fact that the supplemental pleading technically states a new cause of action should  
7 not be a bar to its allowance, but only a factor to be considered by the court in the  
8 exercise of its discretion, along with such factors as possible prejudice or laches.” *Id.* at  
9 474. The purpose of a supplemental complaint is to “promote as complete an adjudication  
10 of the dispute between the parties as possible by allowing the addition of claims which  
11 arise after the initial pleadings are filed.” *William Inglis & Sons Baking Co. v. ITT*  
12 *Continental Baking Co., Inc.*, 668 F.2d 1014, 1057 (9th Cir. 1981).

13 Moreover, Rule 15(d) does not contain a “transactional” test; that is, the new  
14 allegations need not “arise out of the same transaction or occurrence” nor involve  
15 “common questions of law or fact.” *Keith*, 858 F.2d at 474. “While some relationship  
16 must exist between the newly alleged matters and the subject of the original action, they  
17 need not all arise out of the same transaction.” *Id.* In addition to satisfying the minimal  
18 requirement of “some relationship,” a supplemental pleading will not be allowed if doing  
19 so would be unjust to defendants. In this regard, the standard is the same as the one under  
20 Rule 15(a). *See Glatt v. Chicago Park Dist.*, 87 F.3d 190, 194 (7th Cir. 1996). In *Glatt*,  
21 the court declined to permit amendment where the amendment was 16 months after the  
22 complaint and 12 months after the plaintiff knew of the relevant facts.

23 In determining whether an amended pleading should be permitted, “[f]ive factors  
24 are frequently used to assess the propriety of a motion for leave to amend: (1) bad faith,  
25 (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and  
26 (5) whether Plaintiff had previously amended his complaint.” *Allen v. City of Beverly*  
27 *Hills*, 911 F.2d 367, 373 (9th Cir. 1990). The party opposing amendment bears the  
28 burden of showing that these factors are present. *DCD Programs, Ltd. v. Leighton*, 833

1 F.2d 183, 187 (9th Cir. 1987). Prejudice to the opposing party is the most important of  
2 these factors. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.  
3 2003) (*per curiam*).

### 4 **III. Analysis**

5 Defendant argues that although leave to file supplemental complaints that are  
6 related to the original complaint are favored, *Keith*, 858 F.2d 467, a supplemental  
7 complaint may not be used to introduce a separate, distinct and new cause of action.  
8 (Doc. 15 at 4, citing *Planned Parenthood of S. Arizona v. Neely*, 130 F.3d 400, 402 (9th  
9 Cir. 1997).) Defendant contends that if the motion is granted, the case will be  
10 substantially broadened to include essentially two cases, which will not promote judicial  
11 economy; instead, it will “increase the complexity and confusion of issues without any  
12 reduction in witnesses, discovery or trial.” (Doc. 15 at 4.) Defendant asserts that  
13 Plaintiff has listed 21 TFD employees as potential witnesses for the complaint, and the  
14 proposed amended complaint would add an additional 33 witnesses on the new factual  
15 allegations. Other than Plaintiff and her husband, only one independent witness is listed  
16 in both cases. (*Id.*, Ex. 1.) Essentially, none of the witnesses to events in the original  
17 complaint can testify regarding allegations in the proposed amended complaint and vice  
18 versa.

19 Defendant also argues that although the proposed amended complaint alleges that  
20 proposed new Defendant Capt. Langejans became aware of Plaintiff’s prior  
21 discrimination complaint and “enjoyed reading negative comments posted about  
22 Plaintiff” (PAC ¶¶93-95), there is no allegation that Langejans was in any way involved in  
23 those prior events and that the crux of the new claim is that Langejans believed that  
24 Plaintiff’s husband provided her with answers to the promotional test thereby allowing  
25 her to rank first on the test. (Doc. 15 at 4, PAC ¶¶88-89.) Defendant claims the new facts  
26 are unrelated to Plaintiff’s gender or her prior complaints and the proposed amended  
27 complaint provides no factual basis for the allegations that Langejans was motivated by  
28 her gender or the prior complaint.

1 Defendant further contends that the proposed amended complaint seeks to add a  
2 demand for a jury trial. (Doc. 15 at 5.) Federal Rule of Civil Procedure 38 requires that a  
3 party file a demand for a jury trial within 14 days after service of the “last pleading  
4 directed to such issue” and that failure to do so is a waiver of that party’s right to a jury  
5 trial. *See* Fed.R.Civ.P. 38(b), (d). The complaint did not demand a jury, and there was no  
6 separate demand for a jury trial following the Defendant’s answer. Defendant argues that  
7 Plaintiff thus waived her right to a jury trial on the allegations in the complaint.

8 Plaintiff replies that the facts in the proposed amended complaint show that in or  
9 around June or July 2014, Plaintiff competed for a position in the Fire Prevention  
10 Division and was promoted to the position of Fire Inspector. Within a month, Capt. Jeff  
11 Langejans, a Captain in the Fire Prevention Division, became aware of Plaintiff’s  
12 discrimination complaint against TFD. Langejans told one of Plaintiff’s co-workers to  
13 look up articles about the lawsuit and read the comments. Plaintiff alleges that Langejans’  
14 hostility towards Plaintiff included spreading rumors that Plaintiff and her husband were  
15 having marital problems, stating that TFD should have anticipated a complaint such as  
16 Plaintiff filed “the day they started hiring females, ” and stating, regarding Plaintiff and  
17 her husband, that “it would be very easy to kill his enemies and get away with it.” After  
18 Plaintiff returned to work in November 2014 following the birth of her second child,  
19 Plaintiff’s co-workers advised her of the derogatory and discriminatory comments  
20 Langejans had made about her in her absence and that he continued to make. This  
21 created an intimidating and hostile work environment continuing to this day. Plaintiff  
22 alleges that TFD has failed or refused to address her complaints, although Plaintiff and  
23 others in the Fire Protection Division complained to TFD management all the way up to  
24 the Fire Chief. Further, TFD’s failure to act upon Plaintiff’s complaints against  
25 Langejans was in retaliation for Plaintiff’s lawsuit against TFD for violating federal law.

26 Plaintiff argues that the original dispute has not been resolved and is, in fact,  
27 ongoing. The parties are the same and all of the involved employees, are employed by  
28 Defendant. Defendant is legally responsible for the acts and/or omissions giving rise to

1 all of the causes of action in this case. She asserts there is a clear factual relationship  
2 between the claims in her Complaint and her proposed Amended Complaint.

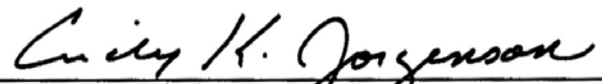
3 The Court agrees with Plaintiff. The Court finds a sufficient factual relationship  
4 between the claims for discrimination raised in the Complaint and the alleged retaliation  
5 asserted in the proposed Amended Complaint. Plaintiff brought her Motion within the  
6 time period set at the Rule 16 Scheduling conference, and it is her first motion to amend.  
7 The new facts allege, inter alia, retaliation for filing the initial agency complaint and this  
8 lawsuit. There is no evidence of bad faith or undue delay. Nor does any asserted  
9 prejudice to Defendant outweigh the need to promote the “complete adjudication of the  
10 dispute between the parties.” *See William Inglis & Sons Baking Co.*, 668 F.2d 1057.

11 As for Defendant’s argument regarding the jury demand, the Court declines to  
12 transform Plaintiff’s Motion to Amend the Complaint into Defendant’s Motion to Strike  
13 the request for a jury. Moreover, Federal Rule of Civil Procedure 38(c) contemplates the  
14 notion that some issues may be tried by a jury and others tried by the court. This is  
15 without prejudice to Defendant filing a proper motion.

16 **IT IS ORDERED:**

- 17 (1) Plaintiff’s Motion to Amend Complaint (Doc. 13) is **granted**.  
18 (2) Within 5 days of the date of this Order, Plaintiff must file her Amended  
19 Complaint.

20 Dated this 10th day of August, 2015.

21  
22  
23 

24 Cindy K. Jorgenson  
25 United States District Judge  
26  
27  
28